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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL HERNANDEZ AGUIRRE,

Defendant and Appellant.

F069804

(Super. Ct. No. 676121-7)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Ryan McCarroll and Sean M. McCoy, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Gomes, J. and Poochigian, J.

Appellant Manuel Hernandez Aguirre appeals from the trial court's denial of his petition for resentencing under Proposition 36, the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126).¹ We affirm.

FACTS

Shortly after midnight on January 9, 2002, a Clovis police officer saw Aguirre slump down in a car as he drove by the officer. After the officer began following him, Aguirre ran a red light. A pursuit ensued during which Aguirre drove at speeds from 60 to 70 miles per hour and ran a second red light and a stop sign. Eventually, Aguirre jumped from the car while it was still moving and fled, but he was apprehended a short distance away. His car struck a parked vehicle.

On December 3, 2002, Aguirre pled no contest to driving without a license (count 2/Veh. Code, § 12500, subd. (a)), resisting arrest (count 3/§ 148, subd. (a)(1)), and failing to stop after being involved in an accident involving property damage (count 4/Veh. Code, § 20002, subd. (a)).

On December 6, 2002, a jury convicted Aguirre of felony evading a peace officer (count 1/Veh. Code, § 2800.2, subd. (a)). In a separate proceeding on that date, the court found true three prior prison term enhancements (§ 667.5, subd. (b)), and allegations that Aguirre had two prior convictions within the meaning of the three strikes law (§ 667, subds. (b)-(i)).

On January 8, 2003, the court sentenced Aguirre to an aggregate indeterminate term of 28 years to life: an indeterminate term of 25 years to life, and three prior prison term enhancements.

On April 12, 2013, Aguirre filed a petition for recall of sentence pursuant to section 1170.126.

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

On May 30, 2014, the court found Aguirre posed an unreasonable risk to public safety if resentenced and denied his petition.

DISCUSSION

The Three Strikes Reform Act of 2012 (Proposition 36) created a postconviction release proceeding for third strike offenders like Aguirre, who are serving indeterminate life sentences for crimes that are not serious or violent felonies. If such an inmate meets the criteria enumerated in section 1170.126, subdivision (e), he or she will be resentenced as a second strike offender unless the court determines such resentencing would pose an unreasonable risk of danger to public safety. (§ 1170.126, subd. (f); *People v. Yearwood* (2013) 213 Cal.App.4th 161, 168.)

On November 4, 2014, voters enacted Proposition 47, the Safe Neighborhoods and Schools Act (Proposition 47), and it went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Insofar as is pertinent here, Proposition 47 renders certain drug- and theft-related offenses misdemeanors that previously were felonies or “wobblers,” unless they were committed by certain ineligible defendants. Proposition 47 also created a new resentencing provision—section 1170.18—by which a person currently serving a felony sentence for an offense that is now a misdemeanor may petition for a recall of that sentence, and request resentencing in accordance with the offense statutes as added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies the criteria in subdivision (a) of section 1170.18 shall have his or her sentence recalled and be “resentenced to a misdemeanor ... unless the court, in its

discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (*Id.*, subd. (b).)

Subdivision (c) of section 1170.18 provides: “As used throughout this Code, ‘unreasonable risk of danger to public safety’ means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.”

Aguirre contends that the clarification of the meaning of “unreasonable risk of danger to [the] public” contained in Proposition 47 applies to his case and requires reversal and remand to the trial court, with directions to the court to grant a motion for resentencing pursuant to section 1170.126 outright, or to reconsider it with the clarified definition.

This court addressed this identical issue in *People v. Valencia* (2014) 232 Cal.App.4th 514 (*Valencia*), a published opinion that was superseded when review was granted by the Supreme Court (S223825). In *Valencia*, this court held that in passing section 1170.18, subdivision (c), voters did not intend the definition of “unreasonable risk of danger to public safety” contained in that section to apply to the phrase as it appears in section 1170.126.

No purpose would be served by fully repeating our analysis and explanation because undoubtedly review in this case will also be granted. Based on the reasoning in *Valencia*, we conclude: (1) Proposition 47 has no effect on Aguirre’s petition for resentencing under section 1170.126; and (2) he is not entitled to a remand so the trial court can redetermine his entitlement to resentencing under that section utilizing the

definition of “unreasonable risk of danger to public safety” contained in section 1170.18, subdivision (c).

DISPOSITION

The judgment is affirmed.